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Supreme Court, U.S.
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In The

Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT
and DAVID W. GORDON, Superintendent

Petitioners,

v.

MICHAEL A. NEWDOW,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* ATHEISTS AND OTHER FREETHINKERS IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS*[1]

Atheists and Other Freethinkers (AOF) was organized in Sacramento in 1993 to advance public understanding of atheism and urge civic acceptance of atheists in the community. Through its educational programs, projects and publications, this Section 501(c)(3) organization extends atheistic perspectives concerning the separation of church and state and the right to think and speak freely on these perspectives.

In American society there is a distinct cultural bias against persons whose worldview is naturalistic. Such individuals are labeled *nonbelievers,* despite their holding sincere convictions. While "persons of faith" find easy acceptance as full participants in society, persons who are openly "deity-free" often are marginalized. Yet the right to believe in a divinity, *or not*, is afforded to every American by the First Amendment of the United States Constitution. The AOF organization affirms this right of conscience–free of discrimination or penalty–and seeks to ensure genuine neutrality (a level playing field) in our nation's public schools for youngsters of all faiths *and none*.

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[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *Amicus* or its counsel, make a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

There are people, sincere and upstanding citizens, along with youngsters in many American families, who hold to a naturalistic worldview. The contemporary Pledge of Allegiance, to them, contains more than a patriotic message.

They perceive a *portion* of the Pledge phraseology as an *article of religious belief* that confounds their sincere understandings and challenges their ultimate beliefs. To utter the Pledge in its entirety is, to them, a violation of conscience. They perceive the Pledge exercise as obligating them to confront a wrenching conflict between their naturalistic ultimate beliefs and their patriotism. The dilemma provoked by the added Pledge wording (under God) presents a problem to these citizens. The consequences of the dilemma for these persons are injurious in many ways. Their conduct in response to invitations to say the Pledge in a public setting may be result in their encountering of hostility and exclusion from their peers. For youngsters in schools, consequences can be devastating and long lasting.

Public schools, as the nursery of our democratic ideals, impart to students an image of how America *actually* looks upon its citizens' religious freedom and civil rights. No child should incur teacher condescension or classmate derision for holding to the ultimate beliefs of the parents who have entrusted education of that child to the school. However, it happens when youngsters and adults of conscience are pressed by circumstance to conform to the Pledge ritual in its current form.

Return of the Pledge to its pre-1954 form would remove the phraseology, the dilemma, and the divisiveness for this segment of the population. To present and buttress this overall argument, AOF tenders a sampling of excerpts from letters written by individuals.

ARGUMENT

According to recent statistics related to religion and nonreligion in the United States (American Religious Identification Study, City University of New York, October 2001), over twenty-nine million adult Americans claim "no religion."

The 1954 introduction of "under God" into of the Pledge of Allegiance appears to be of little concern to many of those nonreligious individuals. However, there are many nonreligious Americans for whom the post-1954 Pledge wording challenges their sincerely held ultimate beliefs, their naturalistic worldview.

I. THE PLEDGE INCORPORATES AN ARTICLE OF BELIEF THAT IS IN CONFLICT WITH THE NATURALISTIC WORLDVIEWS OF MANY OF OUR CITIZENS AND THEIR CHILDREN.

To many persons in the nation's communities and schools who hold a naturalistic worldview, adults and youngsters alike, the Pledge conveys a distinctly religious message.

> I remember saying the "Pledge" in school when I was young, and feeling good about it. Somewhere along the way Congress turned it into a prayer and it never felt right after that.
> **Roger C. Mabus (State of Pennsylvania)**

> When my daughter was in kindergarten, she asked me why she had to pledge allegiance to "god" when she wasn't even sure if she believed in "god." I told her that she didn't have to say the words "under god" or she could not say the pledge altogether.... (s)he knew that she would be ostracized if she didn't say it and, for a five year-old, being ostracized is a very scary thing. The result is that she says it every day even though she doesn't believe in "god."
> **Roy Leban (State of Washington)**

During The Pledge, I don't say "under God" because I don't think God is real or true. I don't have the nerve to sit down and not say The Pledge at all. I used to be silent just during this part, but now I say "under the government" instead. Still, this has made me feel different and allowed the other kids in my class to find out that I am an atheist without me telling them.
Bailey Wood Frei (age 10, State of Kansas),

During the first few years of elementary school I blindly recited the Pledge, not paying much attention to or even fully understanding its significance. Later on, I began to see how the phrase "under God" was at odds with a secular worldview. I felt uncomfortable reciting these words, especially as part of a solemn oath, and resented my teacher, school and government for imposing a religious belief I did not share.
Noah Wittman (State of California)

Individuals who hold strongly to a naturalistic worldview consider it extremely demeaning to feel coerced to say, or even to listen to, the words "under God" in a supposedly secular pledge of allegiance to their nation. Pledging to a nation is one thing, but affirming the existence of a God, when one has no deity-belief, is quite another.

I cannot, in honesty and good conscience, take the Pledge of Allegiance while it contains reference to supernatural forces ('under God'); to do so would require me to embrace both hypocrisy and dishonor. Thus I feel I am excluded from taking up my full role in American society because of my religious beliefs…I earnestly request that the phrase 'under God' be removed from the Pledge of Allegiance and the less divisive pre-1954 Pledge of Allegiance be reinstated. To me it sounds as though I can only become an American citizen if I believe in a deity or

am prepared to be a hypocrite/commit perjury. … I think it is most unfortunate that the current Pledge requires a belief in God if you wish to be an American citizen.
Ian S. Chart (prospective citizen, State of California)

In my school the pledge is said every day during first period before announcements. Because the words "under god" are included in the current pledge I do not feel comfortable saying or standing for the pledge. The words "under God" have also opened the doors at my school for additional religious encroachment. … This makes me even more uncomfortable when tire pledge is said, but I am too worried about retaliation to speak up about it.
Christopher Michael Race (State of Wisconsin)

When my two daughters attended Hart County, Kentucky, public schools, they were required to recite the Pledge of Allegiance every school day against my will, including its unconstitutional "under God." Their being excused from this ritual would have been social suicide.
Robert A. Bloomer (State of Kentucky)

My daughter's rights to free exercise of her religious beliefs are violated every day at her state- funded public school, where every classroom has the word "god" prominently displayed and the principal leads the school in the Pledge of Allegiance over the P A system every morning.
Christopher Michael Race, (State of Wisconsin)

II. THE PLEDGE AS STANDARD "PATRIOTIC PRACTICE" UNJUSTLY PITS NATURALISTIC BELIEFS AGAINST HEARTFELT LOVE OF COUNTRY.

By invoking as standard "patriotic practice" an affirmation viewed by some as incorporating an article of belief, the nation and its public schools unjustly drive a segment of the citizenry (and youngsters) to compromise sincerely held naturalistic beliefs in order to affirm an earnest love of country.

> But there came a day when I could no longer pretend to believe things I did not believe in order to please others… I am an American. I should not have to be religious to be patriotic!
> **Edward E. Carstens (State of California)**

> I have often been asked, when the Pledge of Allegiance streams through the classroom intercom, why I do not stand and recite it along with my fellow classmates. On some occasions I tell them that I do not believe in God, and thus cannot honestly state such a pledge. On other occasions I inform them about how stating such a pledge is not keeping with either American ideals or American tradition. I have no qualms as to the validity of either of these answers. Only rarely though, is my answer satisfactory to the person who is interested enough to inquire.
> **David Leuszler (State of Georgia)**

> I am a patriot. My eight-year-old son is a patriot. Unfortunately, the Pledge of Allegiance excludes my son and me. The phrase "one nation under God" indicates that we are not one with this nation because we do not believe in God. The pledge could not be more exclusionary if it contained the phrase "one white nation". At every school gathering, from back-to-school night this fall to his second grade concert last spring when the Pledge was recited, my son and I must face a sad moment of shared realization that most of those who surround us are thought to be more a part of this nation than are we. He bears the stigma alone during the daily recitation at school.
> **Christine Miller, (State of Maryland)**

Some persons find the experience of "saying the Pledge" merely unpleasant but tolerable, while others consider it mental tyranny. Numerous citizens and school children have been tormented by feeling they must conform to an article of belief that is foreign to their naturalistic belief system. For some, the perceived necessity to state the *religious portion* of the pledge requires of them a violation of conscience that calls into question the nation's capacity to live up to the patriotic ideals they admire most.

> The truly pervasive and much more insidious message of our unfitness came from our government. …The Pledge of Allegiance was its own unique form of torture and shame. Love for and pride in my country made me pleased to stand, place my hand over my heart, and recite the Pledge...until around third grade, when I started to feel uncomfortable about the words "under God." I then had to decide, every single morning, whether I would choose conformity and comfort, or choose to respect myself, my family, and our beliefs. Some days I said the words, but softly. Many days I just mouthed them. On braver days I kept my mouth closed and hoped that none of my classmates would notice that I hadn't spoken during that heartbeat. But worse than what my classmates might think, what would my country think if it knew that I had skipped two words of the Pledge? No amount of reassurance from my parents that being an atheist didn't make me any less American could fully assuage my concern.
> **Joslyn Drisana Polzien, (State of Nebraska)**

The overall effect of the exercise *with the religious wording,* is that it hurts and marginalizes many citizens, thereby dividing and mocking our notion of an "indivisible" nation.

> I am a moral, productive, taxpaying citizen of the United States of America. ..Each and every time that the Pledge is recited at various events, I am painfully reminded that I am an outsider within my nation because I cannot, in good conscious, pledge allegiance to the Christian God.
> **Evelyn J. Horn (State of Colorado)**

> I am an American citizen and I love this country very much. When I start the Pledge of Allegiance, I get a warm patriotic feeling, my shoulders square up and I feel proud. But, when I come to the phrase "under God" I cannot utter the words. They are contrary to the way I believe. I finish the remainder of the Pledge with a vague feeling of anger and resentment. … I resent being asked to say "under God" against my belief. I feel excluded and diminished because this phrase is in our country's official Pledge of Allegiance.
> **Grant M. Hazel (State of California)**

> I have worked throughout most of my life, paid my taxes, am highly educated, voted, volunteered in the community and for a political campaign, and served in the military for 4 years. Despite this, I feel totally discounted as a citizen by having the words "under god" in our pledge of allegiance…
> **Wayne Orgar (State of Nevada)**

> My mind quickly raced as I considered my options. If I remained seated or walked out, I knew that I would be branded by some as unpatriotic, which could negatively affect my outcome in the competition. …I opted to stand in silence. I felt extremely uncomfortable as I violated my own integrity by pretending to comply with the will of the intolerant majority…I advanced to the larger Division contest…As the meeting was about to begin, I surveyed the back of the room and identified an adjoining hallway where I could discretely stand if necessary. When they announced the Pledge, I quietly slipped out of the room. As a law-abiding American citizen, I ws literally hiding to avoid being perceived as unpatriotic, and risking an unfair judgment of the speech that I had worked so hard to prepare I felt like an outsider in my own country.
> **Stuart Tanquist (State of Minnesota)**

III. A DEMURRAL FROM THE "VOLUNTARY" PLEDGE EXERCISE IS OFTEN INJURIOUS TO THE PERSON WHO DEMURS.

Individuals who view the Pledge as a measure of patriotism, but who cannot bring themselves (due to the article of belief it contains) to utter the passage in its entirety and thus openly demur in public settings, will often encounter hostile conditions and ostracism. Even if only omitting the religious wording, they may incur long-lasting feelings of second-class status citizenship (particularly deleterious outcomes in classroom settings, where schools that seek to imbue future citizens with loyalty and pride).

> She said that was fine, but that out of respect for the rest of the class, I should leave the classroom and stand outside in the hallway during the pledge. This I did for the remainder of third grade…Although I was confident of the rightness of my position it was obvious that I was alone in my beliefs. By asking me to stand alone in that hallway every morning I felt the teacher had made her opinion of me clear; that is, I did not belong.
> **Cary Pincus (State of California)**

The local high school (New Castle IN) goes through the pledge on a digital display board flashing "Under God" for emphasis. All this only verifies the exclusionary nature of the pledge in my mind. Theistic fealty was being rubbed in my face as a prerequisite for equal consideration of national loyalty. …I no longer stand for the pledge recitation at school events. …(a) few have confronted me with "love it or leave it!" remarks which only means that they deny toleration of dissent as a reason to love America. So this is how adults treat others for exercising their liberty of conscience. How much more likely then that children would be so insensitive in school?

David Cooper (State of Indiana)

I felt the words "under God" were inappropriate, and my knowledge of the history of the insertion of these words only made it seem more inappropriate to me. I felt the Pledge of Allegiance should have been left in its original state. For these reasons, I would decline to join in the recitation of the Pledge each morning at school. One day early in the school year, the teacher noticed that I was not standing up. He then interrupted the Pledge by shouting in a loud voice, "Either stand up for the Pledge, or get out of my f--- ing country!" Naturally, I was quite upset by his response. Firstly, he tried to use intimidation to force me to do something I later learned I was not required to do. Secondly, and more importantly, he was implying that I was un-patriotic and not proud of my country just because I had my reasons for not reciting the Pledge, which is completely false. I love this country, it is my home, and I would not want to live anywhere else. That is precisely why I get so concerned about issues like the separation of church and state, a principle our forefathers recognized as

being crucial to our liberty. When I went home that day, I did some more research on the Pledge of Allegiance to see if its recitation was mandatory for schoolchildren. I learned that it wasn't, and that I had every right not to participate. This was something I had never been told in school. I had always been led to believe that reciting the Pledge was mandatory, and I had seen numerous cases of other students getting in trouble or being humiliated for declining to recite, whatever their reasons may have been. Some supporters of the current version of the Pledge claim that people who object to it can just decline to recite it. However, as you can see, it is not that simple. Incidents of people being intimidated or forced to recite, or being humiliated or excluded for declining, are endless.

Jess Frazier (State of Oregon)

In 1963, in my tenth grade math class, I stopped saying the Pledge of Allegiance after the word "America." My reason was increasing mental anguish, which had reached a crisis point, over publicly professing belief in things I privately thought were false. This included "liberty and justice for all" (it was the civil rights era, and clearly we did not have liberty or justice for all) and "under God" (because I didn't believe in God). I stood up with the class, put my hand over my heart, and sincerely hoped that no one would notice that I left some words out. My teacher confronted me. He demanded that I explain to the class why I was not saying the entire pledge. Self-conscious and unprepared, I muttered something about not wanting to say things which I did not believe in….The teacher became openly hostile to me for the rest of the semester. I was frequently ridiculed in front of the class. He accused me of being a traitor and rejecting the values on which my country was

founded…The climate of fear intimidated others in the class. At my twentieth high school reunion, a fellow classmate approached and recalled vividly my humiliation in tenght grade math. He told me that had wanted to stand up for me, but didni't for fear of being victimized himself. He wanted to apologize. Watching me suffer alone was one of his strongest memories of high school, which had caused him to live with twenty years of guilt.

Ellen Bulf (State of California)

I can not remember exactly when I stopped reciting the pledge; suffice to say that, as my beliefs developed, I went through phases where I recited it in its entirety when I was very young, recited it without saying, "under God," and then stopped reciting it altogether. Finally, one morning, I did not stand up for it. I had not completely thought through the action, but I believed that I should not have to stand up in unison during the recitation of words I did not believe in, given the basic understanding of freedom I had of religion-at that time. Immediately after the pledge, my teacher reprimanded me and insisted that I stand for the length of the pledge even if I did not recite it. Standing in front of the class in this manner was humiliating. I felt embarrassed, angry, and alienated from my peers.

Robin Lee Jacobs (State of Georgia)

During High School I was directly criticized in front of my classmates by my math teacher for not saying the Pledge of Allegiance. The Teacher said that it was "pretty bad" that I did not "say the Pledge" on such an occasion. I felt intimidated because I thought that if I said anything to stand up for myself I would get into trouble. I felt alienated and like I did not belong.…In this part of the country, it is near certainty that atheophobic responses will follow such a forced

public display. It creates an atmosphere where minorities such as myself want nothing but to remain in a closet but are forced to come out to meet nothing short of social ostracism.

Seth N. Jackson (State of Missouri)

One of those who showed concern about my refusal to stand for the Pledge happened to be my teacher. My teacher, in a rather untypical fashion, decided to hold off the inquiry for why I decided not to stand for the Pledge. She decided to instead lecture me in front of the class for longer than a minute about how I was "showing disrespect to the men and women who protect our freedoms…"including her father, a World War II Veteran. How ironic it was that the current Pledge that I objected to was not established until 1954… Being lectured by a person of authority quite pointedly separated me out from everyone in the class…I began wondering why this perpetual noose of a conversation thread needed to be placed around my neck.

David Leuszler (State of Georgia)

(1954, Fourth grade) The teacher put the new pledge up on the board and announced that we would be saying it that way from then on. …I rebelled at the idea of changing the pledge, and recited it as I had always done. One of the kids told the teacher that I hadn't said it the new way. I said I forgot. Each day for several more days (I don't remember how many) I did the same thing with the same excuse. Finally the teacher told me that she believed I was simply being obstinate and that I needed to practice the pledge by writing it correctly 25 times and bring it to class the next day. I did that but still said it like I always had. She gave me one more chance to get up in front of the class and recite the pledge correctly or she would sent me down to the principal's office for a spanking. I

refused, got the spanking and was sent back to class. The next day, I got another spanking. The next day, I caved in and said the pledge like everyone else and didn't resist. My dad had said that for every spanking I got at school, he would give me a worse one at home. I was only nine and it was obvious to me that there was nothing else I could do. The other students teased me for having to get a spanking before I would do what I was supposed to. But the most unforgivable act was by the teacher, someone who should have known better. She called me "pig-headed" in front of the whole class, and not just once. It took a long time to live that name down. I admit that none of this sounds overly abusive after all these years, but I was made to feel that I was an outsider. Conformity was expected to be considered a good student, but to whip a child into conformity can make him or her angry and defiant. It adversely affected my life into adulthood. (However, it also made me determined to think for myself and to question everything, at attitude which serves me well in college and my life in general).

Peggy Hanks (State of Washington)

The teacher, Ms. S, was in the habit of having the children stand, place their right hands 'over their hearts', and recite the Pledge of Allegiance every morning. Ms. S noticed immediately that Megan remained seated and did not recite the Pledge. She asked her why she didn't stand and Megan simply told her "Because I am an Atheist." Nothing more was said at that time. In early October, after several weeks of peaceful coexistence, Ms. Sala suddenly decided she had had enough. She stormed over to Megan's desk, grabbed her by the upper arm, yanked her to her feet, and yelled at her "You <u>will</u> stand!" Megan did complain that her arm hurt, though it was not bruised.

Of course I was in the Administration Office the very next day with Ms. S and the Principal, Mr. G, and I most certainly did raise my voice more than once in our discussion. I pointed out that this is exactly why this nonsense of reciting the Pledge should stop as most teachers do not think it is voluntary and that it produces exactly this type of hatred towards those who do not wish to conform. I received profuse apologies, and denials of hate, but my request that recitation of the Pledge be stopped was refused. Naturally, this 'outed' Megan to the rest of her classmates and pointed her out as a troublemaker.

Karl James Black (State of Michigan)

America's classrooms should be places free of where youngsters' can have conscientious convictions and sincere beliefs and not encounter coercive conditions or relegation to second-class status or outside status. Yet these very consequences are occurring now, and have been taking place since Congress in 1954 added into the Pledge of Allegiance the two words, "under God." That action set the stage for an ongoing unhappy circumstance for many youngsters, parents, and teachers in our schools.

The two-word insertion divides the "indivisible" citizenry, setting apart "as outsiders" those who cannot in good conscience utter what they view as an article of belief. The practice undermines our civic ideals, laying a fertile field for religious bigotry and disregarding the increasingly pluralistic nature of our nation.

I understand that the phrase "under God" was inserted in the Pledge of Allegiance in the first place in the mid-1950's to differentiate the United States of America from what was perceived as a "godless" Soviet Union. However, the Soviet Union is no more. The threat to the United States is now a culture that demands a marriage between government and religion.

Phillip Wilson (State of Indiana)

CONCLUSION

There exist numerous persons who desire to declare their patriotism but feel that reciting the current Pledge compels a violation of their scruples and the very liberty of conscience that the First Amendment is supposed to protect. Restoring the Pledge to its pre-1954 form would alleviate a predicament for such persons. The restoration would not be a step backward for the nation. Rather, it would be a just step forward—confirming a "nation indivisible" and inviting all citizens to full participation in a major patriotic declaration.

Respectfully submitted,

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